



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

September 21, 2021

Dr. David L. Hargett

Ex. 6 Personal Privacy (PP)

Re: Freedom of Information Act Request – EPA-2021-006647
Fee Waiver Determination

Dear Dr. Hargett:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA), National FOIA Office (NFO) on September 21, 2021, in which you are seeking: “I hereby request under FOIA all information in the records of EPA-Region IV regarding the Lake Conestee Site located in Greenville County, SC, since 01 October 2018. The site ID is as follows: Lake Conestee EPA ID: SCN000407298 In particular I am interested in all documents, reports, analysis, correspondence, and communications regarding the PA/SI process conducted over the past 3 years. I was referred by the Lake Conestee RPM, Alayna Famble, EPA-Region 4 superfund & Emergency Management Division, Restoration and Site Evaluation Section.”

EPA has received your request for a fee waiver. Your request for a fee waiver was evaluated based upon the information you provided in support of your request for a fee waiver and EPA regulations concerning requests for a fee waiver. Your request does not contain enough information to support a finding that a fee waiver may be granted. Therefore, your request for a fee waiver is denied because your submission failed to demonstrate that the information disclosed in response to your request is likely to contribute significantly to public understanding of the operations or activities of the government.

EPA regulations provide a mechanism for requesters to seek records responsive to a FOIA request “without charge or at a charge reduced below” the agency FOIA fee schedule when the National FOIA Office determines “based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1) (2019). EPA’s regulations, consistent with guidance from the Department of Justice, identify six factors for the Agency to consider, four for the contribution to public understanding and two for the requester’s commercial interest.

To evaluate the contribution to public understanding, the Agency considers the following four factors: (1) the subject of the request; (2) the informative value of the information to be disclosed; (3) the contribution to an understanding of the subject by the public is likely to result from disclosure; and (4) the significance of the contribution to public understanding. *See* 40 C.F.R. § 2.107(l)(2)(i)-(iv). Fee waiver requests must address each of the factors. *See* 40 C.F.R. § 2.107(l)(5).

For the third factor above, EPA's regulations state that "The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The Agency will consider a requester's expertise in the subject area and ability and intention to effectively convey information to the public. The Agency presumes that a representative of the news media will satisfy this consideration." *See* 40 C.F.R. § 2.107(l)(2)(iii).

For the reasons below, your fee waiver justification failed to adequately demonstrate that the information will be disseminated for the public *See* 40 C.F.R. § 2.107(l)(2)(iii). You stated: "The subject site is a nature preserve accessible to the public. Information is necessary to make decisions regarding access to the site, protection of public health, and site management. The requestor represents numerous stakeholders and local agencies affected by site conditions and site status."

However, you have not addressed the EPA's regulatory third factor with enough detail. You have not specified how your work using FOIA material will specifically be distributed to a reasonably broad audience of persons interested in the subject beyond a statement that you represent "numerous stakeholders and local agencies affected by site conditions and site status." Additionally, you had not provided details about an expertise in this subject area and an ability and intention to effectively convey information to the public. The Agency may presume that a representative of the news media may satisfy this factor, but you have not provided information regarding a news media status. Therefore, your fee waiver request is denied.

You may appeal this fee waiver determination by email at hq.foia@epa.gov, or by mail to the EPA's National FOIA Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2310A), Washington, DC 20460 or through FOIAonline if you are an account holder. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1200 Pennsylvania Avenue, N.W., WJC-N Building, Room 5315, Washington, DC 20460. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal"

Your fee waiver request is denied because you did not address with enough detail the factor described above, under EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l). Because your fee waiver request did not provide enough detail on the one identified factor, the National FOIA

Office did not make a determination on the sufficiency of your request with respect to the other factors. Should you choose to appeal this determination, please be sure to provide information to address all six factors required by EPA's FOIA Regulations in your appeal. For more information about the FOIA fee waiver factors, please visit our website at: <https://www.epa.gov/foia/requesting-foia-fee-waivers>.

Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Sincerely,



Digitally signed by KEVIN
HILL
Date: 2021.09.21
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Kevin W. Hill
Attorney-Adviser
National FOIA Office